

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01- 12257-PBS**
) **Subcategory Case. No. 06-11337**
)

THIS DOCUMENT RELATES TO:

*United States of America ex rel. Ven-A-Care of the
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
Civil Action No. 05-11084-PBS

) **Hon. Patti B. Saris**
)
) **Magistrate Judge**
) **Marianne B. Bowler**
)
)
)

**DEY DEFENDANTS' CONSENTED TO MOTION FOR LEAVE TO FILE A REPLY
IN FURTHER SUPPORT OF THEIR MOTION IN LIMINE TO EXCLUDE FROM
EVIDENCE THE REPORTS AND TESTIMONY OF THEODORE R. MARMOR, PH.D.**

Pursuant to Rule 7.1(b)(3) of the Local Rules for the District of Massachusetts,
Defendants Dey Pharma, L.P. (formerly known as Dey, L.P.), Dey, Inc., and Dey L.P., Inc.
(collectively "Dey"), seek leave of the Court to file a Reply in Further Support of their Motion *In
Limine* to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor, Ph.D.
Counsel for Dey has conferred with counsel for the Government, who has indicated that the
Government consents to this motion. The proposed Reply Memorandum of Law in Further
Support of Dey's Motion *In Limine* to Exclude from Evidence the Reports and Testimony of
Theodore R. Marmor, Ph.D. is annexed hereto as Exhibit A, and the Declaration of Neil Merkl in
support of Dey's reply and accompanying exhibits are annexed hereto as Exhibit B.

Dated: June 30, 2010

Respectfully Submitted,

KELLEY DRYE & WARREN LLP

By: /s/ Neil Merkl
Paul F. Doyle (BBO # 133460)
Sarah L. Reid (*pro hac vice*)
William A. Escobar (*pro hac vice*)
Neil Merkl (*pro hac vice*)
Philip D. Robben (*pro hac vice*)
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

-and-

Martin F. Murphy (BBO # 363250)
Robert E. Toone (BBO #663249)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02110
Telephone: (617) 832-1000
Facsimile: (617) 832-7000

*Attorneys for Defendants Dey Pharma, L.P., Dey
L.P., Inc., and Dey, Inc.*

LOCAL RULE 7.1 CERTIFICATION

I certify that counsel for Dey has conferred with counsel for the United States,
who have indicated that they will assent this motion.

/s/ Neil Merkl
Neil Merkl

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on June 30, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Neil Merkl

Neil Merkl